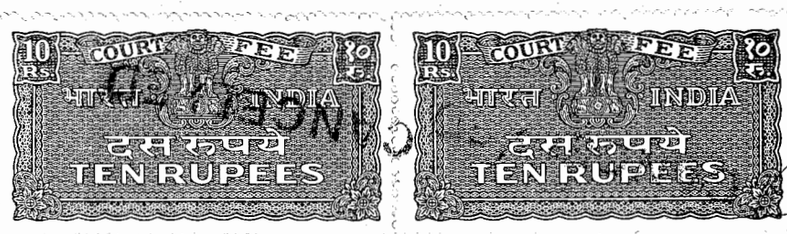

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of 10/-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 3825 /2005

PETITIONER

MEERA BAI PATEL, AGED ABOUT 50 YEARS, WIFE OF SHRI KANYA KUMAR PATEL, RESIDENT OF VILLAGE AND POST GOVARSINHA, WARD NO. 15, TAHSIL SARANGARH, DIST. RAIGARH (CG)

VERSUS

RESPONDENTS

1. MONGRA YADAV, AGED ABOUT 50 YEARS, WIFE OF SHRI LALIT RAM YADAV, RESIDENT OF VILLAGE AND POST GOVARSINHA, WARD NO. 15 TEHSIL SARANGARH, DISTT. RAIGARH (C.G.)

2. RETURNING OFFICER, SHRI TEKESHWAR SINGH THAKUR, ADDITIONAL TAHSILDAR – BARAMKELA, BLOCK BARAMKELA, TAH. SARANGARH, DISTT. RAIGARH (CHHATTISGARH)

3. PRESCRIBED OFFICER, SHRI BUNDEL SINGH MAITRI (TEACHER), BLOCK SARANGARH, POLLING CENTRE NO. 5 (GABARSINGHA) BLOCK BARAMKELA TAH SARANGARH, DISTT. RAIGARH (CG)

4. SUB DIVISIONAL OFFICER, TAH. SARANGARH, DISTT. RAIGARH (C.G.)

P.R. No. 3629/05 Presented by Shri Roopnath dated 23/12/05

शपथ आयुक्त बिलासपुर (छ.ग.) बिलासपुर तहसील कोर्ट

Received copy 28/12/05

INCHARGE
Constitution Cases Section
Office of the Advocate General
State of Chhattisgarh
BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA,

The Petitioner respectfully submits as under:-

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.3825/ **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	22-8-2005 Heard Mr. Roop Naik, counsel for the petitioner. The petitioner has preferred this writ petition under Article 226/ 227 of the Constitution of India, questioning the legality and correctness of order dated 11-7-2005 passed by the Sub Divisional Officer, Sarangarh, i.e. Specified Officer in Election Petition No.21/A-89/04-05, whereby the learned Specified Officer rejected the application of the petitioner for permitting her counsel to cross-examine the witnesses of respondent No.1, who were examined in the absence of counsel for the petitioner and the petitioner on 27-6-2005. Brief facts leading to filing of this writ petition are that respondent No.1 challenged the election of the petitioner as Panch of Gram Panchayat: Gobersingha and on 27-6-2005 the election petition was fixed for evidence of respondent No.1. Perusal of order dated 27-6-2005 reveals that on that day, respondent No.1 along with her one witness was present, however, the petitioner herein and her counsel were not present. After waiting for some time, the evidence of respondent No.1 herein and her witness was recorded and after recording the evidence in ex-parte, the matter was adjourned for 11-7-2005. Thereafter, one K.L. Patel, Advocate, appeared on behalf of the petitioner herein and filed an application before the Specified Officer requesting therein that as counsel for the petitioner herein was busy in	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P.3825/ ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 2 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

some other Court, therefore, an opportunity to cross-examine respondent No.1 herein and her witness be given. However, that application was fixed on 11-7-2005 and on that day vide the impugned order, the said application was rejected on the ground that allowing the application is not justified as the same will delay the proceedings.

Learned counsel for the petitioner submits that as counsel for the petitioner was busy in some other Court, therefore, he could not cross-examine the witness, therefore, there was sufficient and reasonable cause for remaining absent before the Specified Officer at the time of recording the evidence. Therefore, in the circumstances, learned Specified Officer ought to have allowed the application.

The ground, which has been mentioned for rejecting the application, is that if the application is allowed then the proceedings of the election petition will be unnecessarily delayed. The Specified Officer without ascertaining the fact as to whether counsel for the petitioner was busy in some other Court or not, rejected the application. If this order is allowed to exist, then that will amount to injustice to the parties, as counsel for the petitioner was busy in some other Court for which the petitioner should not be penalized. At the most, when the election petitioner and her witness left the Court, proper course for the Specified Officer was to compensate them with cost. Therefore, the order impugned cannot be termed as justified.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P.3825 ..... **सन् 200** 5

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Soma	Issuance of notice to the respondents would further delay the trial of the election petition and the order impugned prima facie appears to be perverse, as such, I consider it appropriate not to issue notice to the respondents, and allow this writ petition in the interest of justice by imposing a cost of Rs.500/- on the petitioner and quash the order impugned. Accordingly, the order impugned is quashed. The petitioner herein will be entitled to cross-examine the witness only after paying Rs.500/- cost to respondent No.1, failing which the order impugned shall stand. The petitioner may appear before the trial Court on the date already fixed and pay the cost. However, if respondent No.1 feels aggrieved by this order, then he will be at liberty to approach this Court by filing application for modification of this order. With the observations and directions aforesaid, the petition stands disposed of. Consequently, M.(W.)P.No.3219/2005 also stands disposed of. Parties are entitled for certified copy of this order. **Sd/-** **L.C. Bhadoo** **Judge**	